

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GUSTAVO GALLARDO,

12 Petitioner,

13 v.

14 MATTHEW CATE,

15 Respondent.

16 } No. C 12-05565 EJD (PR)

17 } ORDER GRANTING MOTION FOR  
18 } CLARIFICATION; DENYING  
19 } REQUESTS FOR EXPANDING THE  
20 } RECORD AND FOR EVIDENTIARY  
21 } HEARING

22 } (Docket No. 17)

23 Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas  
24 corpus pursuant to 28 U.S.C. § 2254 challenging his state conviction in Monterey  
25 County. Petitioner has filed a motion for clarification of Court's most recent order,  
26 filed October 4, 2013, (see Docket No. 16), and other requests. (Docket No. 17.)27 The Court issued an Order to Show Cause on January 8, 2013, (Docket No. 3),  
28 which stated that Petitioner's traverse would be due within thirty days of his receipt of  
Respondent's Answer. Respondent filed an answer on May 7, 2013. (Docket No. 6.)  
Because it was assumed that Petitioner received a copy of the Answer on the same day,  
Petitioner's traverse was due thirty days later, *i.e.*, no later than June 6, 2013. Petitioner  
was then granted an extension of sixty days from the original due date of June 6, 2013,  
such that his traverse was due by August 6, 2013. (Docket No. 10.) Petitioner filed a

1 second motion for extension of time which the Court granted, providing Petitioner  
2 additional time until September 4, 2013, which was a total extension of ninety days  
3 *from the original due date* of June 6, 2013, to file a traverse. (Docket No. 13.)

4 On October 4, 2013, the Court granted Petitioner's request that his Petition for  
5 Review, lodged as Exhibit 7, be construed as his traverse. (Docket No. 16.) Petitioner  
6 now contends that it was not his intention to do so, and believes he has until December  
7 4, 2013, to file a traverse. (Docket No. 17 at 2.) As to the latter, Petitioner is mistaken  
8 because the Court was unequivocal as to the due date in its last Order granting  
9 Petitioner an extension of time. (See Docket No. 13.) Be that as it may, Petitioner shall  
10 be granted a final extension of time **until December 4, 2013**, to file a traverse. The  
11 matter will be deemed submitted on that date if Petitioner does not file a traverse.

12 Petitioner also requests an expansion of the record to pursue a Brady violation  
13 and an evidentiary hearing to find evidence to bolster a claim that an arrest warrant  
14 lacked probable cause. The Court notes that neither of these claims were ever presented  
15 in the original petition and therefore are outside the scope of this action. Accordingly,  
16 the requests are DENIED.

17 This order terminates Docket No. 17.

18  
19 DATED: 10/30/13

20   
21 EDWARD J. DAVILA  
22 United States District Judge  
23  
24  
25  
26  
27  
28